

SECOND REGULAR SESSION

SENATE BILL NO. 1130

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

Read 1st time February 12, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

5072S.011

AN ACT

To repeal sections 144.054, 227.600, 227.615, and 227.645, RSMo, and to enact in lieu thereof five new sections relating to the Missouri public-private partnerships transportation act.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 144.054, 227.600, 227.615, and 227.645, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections
3 135.660, 144.054, 227.600, 227.615, and 227.645, to read as follows:

135.660. 1. As used in this section, the following terms mean:

2 **(1) "Project", any new project as defined in section 227.600,**
3 **RSMo, that is commenced on or after January 1, 2009. "Project" shall**
4 **not be construed to mean any maintenance or improvement to any**
5 **infrastructure in existence or under construction before January 1,**
6 **2009;**

7 **(2) "Tax credit", a credit against the tax otherwise due under**
8 **chapter 143, RSMo, excluding withholding tax imposed by sections**
9 **143.191 to 143.265, RSMo, or otherwise due under chapter 147 or 153,**
10 **RSMo;**

11 **(3) "Taxpayer", any individual or entity subject to the tax**
12 **imposed in chapter 143, RSMo, excluding withholding tax imposed by**
13 **sections 143.191 to 143.265, RSMo, or the tax imposed in chapter 147,**
14 **148, or 153, RSMo.**

15 **2. For all taxable years beginning on or after January 1, 2009, a**
16 **taxpayer shall be allowed a tax credit for revenues received from a**
17 **project completed under sections 227.600 to 227.669, RSMo. The tax**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 credit amount shall be equal to the amount of such revenues received
19 in the taxable year for which the tax credit is claimed. The amount of
20 the tax credit issued shall not exceed the amount of the taxpayer's state
21 tax liability for the tax year for which the credit is claimed. No amount
22 of credit that the taxpayer is prohibited by this section from claiming
23 in a tax year shall be refundable, nor shall any tax credit granted under
24 this section be transferred, sold, or assigned.

25 3. The tax credit authorized in this section shall be claimed at
26 the time the taxpayer files a Missouri income tax return, and shall
27 include any documentation and information required by the
28 department.

29 4. No later than one hundred twenty days after August 28, 2008,
30 the department of revenue shall promulgate rules to implement the
31 provisions of this section. Any rule or portion of a rule, as that term is
32 defined in section 536.010, RSMo, that is created under the authority
33 delegated in this section shall become effective only if it complies with
34 and is subject to all of the provisions of chapter 536, RSMo, and, if
35 applicable, section 536.028, RSMo. This section and chapter 536, RSMo,
36 are nonseverable and if any of the powers vested with the general
37 assembly pursuant to chapter 536, RSMo, to review, to delay the
38 effective date, or to disapprove and annul a rule are subsequently held
39 unconstitutional, then the grant of rulemaking authority and any rule
40 proposed or adopted after August 28, 2008, shall be invalid and void.

41 5. Under section 23.253, RSMo, of the Missouri Sunset Act:

42 (1) The provisions of the new program authorized under this
43 section shall automatically sunset on December thirty-first six years
44 after the effective date of this section unless reauthorized by an act of
45 the general assembly; and

46 (2) If such program is reauthorized, the program authorized
47 under this section shall automatically sunset on December thirty-first
48 twelve years after the effective date of the reauthorization of this
49 section; and

50 (3) This section shall terminate on September first of the
51 calendar year immediately following the calendar year in which the
52 program authorized under this section is sunset.

144.054. 1. As used in this section, the following terms mean:

2 (1) "Processing", any mode of treatment, act, or series of acts performed

3 upon materials to transform or reduce them to a different state or thing,
4 including treatment necessary to maintain or preserve such processing by the
5 producer at the production facility;

6 (2) "Recovered materials", those materials which have been diverted or
7 removed from the solid waste stream for sale, use, reuse, or recycling, whether
8 or not they require subsequent separation and processing.

9 2. In addition to all other exemptions granted under this chapter, there
10 is hereby specifically exempted from the provisions of sections 144.010 to 144.525
11 and 144.600 to 144.761, and from the computation of the tax levied, assessed, or
12 payable under sections 144.010 to 144.525 and 144.600 to 144.761, electrical
13 energy and gas, whether natural, artificial, or propane, water, coal, and energy
14 sources, chemicals, machinery, equipment, and materials used or consumed in the
15 manufacturing, processing, compounding, mining, or producing of any product, or
16 used or consumed in the processing of recovered materials, or used in research
17 and development related to manufacturing, processing, compounding, mining, or
18 producing any product. The exemptions granted in this subsection shall not
19 apply to local sales taxes as defined in section 32.085, RSMo, and the provisions
20 of this subsection shall be in addition to any state and local sales tax exemption
21 provided in section 144.030.

22 3. In addition to all other exemptions granted under this chapter, there
23 is hereby specifically exempted from the provisions of sections 144.010 to 144.525
24 and 144.600 to 144.761, and section 238.235, RSMo, and the local sales tax law
25 as defined in section 32.085, RSMo, and from the computation of the tax levied,
26 assessed, or payable under sections 144.010 to 144.525 and 144.600 to 144.761,
27 and section 238.235, RSMo, and the local sales tax law as defined in section
28 32.085, RSMo, all utilities, machinery, and equipment used or consumed directly
29 in television or radio broadcasting and all sales and purchases of tangible
30 personal property, utilities, services, or any other transaction that would
31 otherwise be subject to the state or local sales or use tax when such sales are
32 made to or purchases are made by a contractor for use in fulfillment of any
33 obligation under a defense contract with the United States government, and all
34 sales and leases of tangible personal property by any county, city, incorporated
35 town, or village, provided such sale or lease is authorized under chapter 100,
36 RSMo, and such transaction is certified for sales tax exemption by the
37 department of economic development, and tangible personal property used for
38 railroad infrastructure brought into this state for processing, fabrication, or other

39 modification for use outside the state in the regular course of business.

40 **4. In addition to all other exemptions granted under this chapter,**
41 **there is hereby specifically exempted from the provisions of sections**
42 **144.010 to 144.525 and 144.600 to 144.746, and section 238.235, RSMo,**
43 **and the local sales tax law as defined in section 32.085, RSMo, and from**
44 **the computation of the tax levied, assessed, or payable under sections**
45 **144.010 to 144.525 and 144.600 to 144.746, and section 238.235, RSMo,**
46 **and the local sales tax law as defined in section 32.085, RSMo, all sales**
47 **and purchases of tangible personal property, utilities, services, or any**
48 **other transaction that would otherwise be subject to the state or local**
49 **sales or use tax when such sales are made to or purchases are made by**
50 **a contractor for use in completing a project under sections 227.600 to**
51 **227.669, RSMo.**

 227.600. 1. Sections 227.600 to 227.669 shall be known and may be cited
2 as the "Missouri Public-Private Partnerships Transportation Act".

3 2. As used in sections 227.600 to 227.669, unless the context clearly
4 requires otherwise, the following terms mean:

5 (1) "Commission", the Missouri highways and transportation commission;

6 (2) "Comprehensive agreement", the final binding written comprehensive
7 project agreement between a private partner and the commission required in
8 section 227.621 to finance, develop, and/or operate the project;

9 (3) "Department", the Missouri department of transportation;

10 (4) "Develop" or "development", to plan, locate, relocate, establish, acquire,
11 lease, design, or construct;

12 (5) "Finance", to fund the costs, expenses, liabilities, fees, profits, and all
13 other charges incurred to finance, develop, and/or operate the project;

14 (6) "Interim agreement", a preliminary binding written agreement
15 between a private partner and the commission that provides for completion of
16 studies and any other activities to advance the financing, development, and/or
17 operation of the project required by section 227.618;

18 (7) "Material default", any uncured default by a private partner in the
19 performance of its duties that jeopardizes adequate service to the public from the
20 project as determined by the commission;

21 (8) "Operate" or "operation", to improve, maintain, equip, modify, repair,
22 administer, or collect user fees;

23 (9) "Private partner", any natural person, corporation, partnership,

24 limited liability company, joint venture, business trust, nonprofit entity, other
25 business entity, or any combination thereof;

26 (10) "Project", [a bridge to be owned by the commission and the Illinois
27 department of transportation or any other suitable public body of the state of
28 Illinois, which is located across the boundaries of the state of Illinois and the
29 state of Missouri in a city not within a county to be financed, developed, and/or
30 operated under agreement between the commission, a private partner, the Illinois
31 department of transportation, and, if appropriate, any other suitable public body
32 of the state of Illinois] **includes any bridge, street, road, highway, access**
33 **road, interchange, intersection, traffic sign, traffic device, traffic or**
34 **pedestrian control signal, parking lot, bus stop, station, garage,**
35 **terminal, hanger, shelter, rest area, dock, wharf, lake or river port,**
36 **airport, railroad, light rail or other mass transit, pipelines, and any**
37 **similar or related improvement or infrastructure;**

38 (11) "Public use", a finding by the commission that the project to be
39 financed, developed, and/or operated by a private partner under sections 227.600
40 to 227.669 will improve or is needed as a necessary addition to the [state highway
41 system] **total transportation infrastructure needs of the state;**

42 (12) "Revenues", include but are not limited to the following which arise
43 out of or in connection with the financing, development, and/or operation of the
44 project:

45 (a) Income;

46 (b) Earnings;

47 (c) Proceeds;

48 (d) User fees;

49 (e) Lease payments;

50 (f) Allocations;

51 (g) Federal, state, and local moneys; or

52 (h) Private sector moneys, grants, bond proceeds, and/or equity
53 investments;

54 (13) "State", the state of Missouri;

55 (14) ["State highway system", the state system of highways and bridges
56 planned, located, relocated, established, acquired, constructed, and maintained
57 by the commission under section 30(b), article IV, Constitution of Missouri;

58 (15)] "User fees", tolls, fees, or other charges authorized to be imposed by
59 the commission and collected by the private partner for the use of all or a portion

60 of a project under a comprehensive agreement.

227.615. The commission may by commission minute approve the project
2 if the commission determines the project will improve and is a needed addition
3 to the [state highway system] **total transportation infrastructure needs of**
4 **the state.**

227.645. 1. Any financing of the project may be in such amounts and
2 upon such terms and conditions as may be determined by the commission and the
3 private partner in the interim or comprehensive agreement. The commission and
4 the private partner may use any and all revenues that may be available to them
5 and may, to the fullest extent permitted by applicable law, issue debt, equity, or
6 other securities or obligations.

7 2. The private partner may issue corporate bonds, private activity bonds,
8 refunding bonds, notes, and other obligations, and may secure any of such
9 obligations by mortgage, pledge, or deed of trust of any or all of the property and
10 income of the private partner. The commission may contract with the private
11 partner to assist in issuing bonds, notes, and other obligations under this
12 subsection. The private partner shall not mortgage, pledge, or give a deed of
13 trust on any real property or interests obtained by eminent domain acquired from
14 the state of Missouri or any agency or political subdivision of the state. Bonds,
15 notes, and other obligations issued under this subsection shall exclusively be the
16 responsibility of the private partner payable solely out of private partner moneys
17 and property and shall not constitute debt or liability of the commission, the state
18 of Missouri, or any other agency or political subdivision of the state. The private
19 partner and the commission shall not be obligated to pay such bonds, notes, or
20 other obligations with any moneys other than those specifically pledged to
21 repayment. Any such bonds, notes, or other obligations issued by the private
22 partner or the commission shall state on the face that they are not obligations of
23 the state of Missouri or any agency or political subdivision of the state. Any
24 private partner bonds issued under this subsection, the interest thereon, and any
25 proceeds from such bonds shall be exempt from taxation by the state of Missouri
26 for all purposes except the state estate tax.

27 3. The private partner may also contract with the commission for the
28 commission to issue state road bonds for the project and to loan the proceeds
29 thereof to the private partner.

30 4. **The private partner may also invest in a project with private**
31 **funds raised for such purposes. In the event that a private partner**

32 invests private funds in a project, and such partner has a Missouri
33 income tax liability for a tax year before the investment in a project,
34 the income tax liability shall be decreased in an amount equal to the
35 partner's investment in such project.

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